

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION**

CIVIL NO. 2:06CV4

**STATE OF NORTH CAROLINA,
ex rel., and NICHOLAS JACK
AYERS,**

Plaintiffs,

vs.

MEMORANDUM AND ORDER

**JAY SELLERS, in his Official
Capacity as a North Carolina State
Trooper; BOBBY M. DEBRUHL,
Individually and in his Official
Capacity as Sheriff of Graham
County; SCOTT CALDWELL,
Individually and in his Official
Capacity as an Employee of the
Sheriff of Graham County;
BRIAN JONES, Individually and in
his Official Capacity as an Employee
of the Sheriff of Graham County; and
FIDELITY AND DEPOSIT
COMPANY OF MARYLAND,
Surety for Sheriff Bob DeBruhl,**

Defendants.

THIS MATTER is before the Court on the Magistrate Judge's Fourth
Memorandum and Recommendation.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, United States Magistrate Judge Dennis L. Howell, was designated to consider pending motions in the captioned civil action and to submit to this Court recommendations for the disposition of these motions.

On June 4, 2007, the Magistrate Judge filed a Memorandum and Recommendation in this case containing proposed findings of fact and conclusions of law in support of a recommendation regarding the motion of Defendant Jay Sellers to dismiss Plaintiff's claims against him in his official capacity as a North Carolina State Trooper.¹ The parties were advised that any objections to the Magistrate Judge's findings were to be filed in writing within 14 days of service of the Recommendation; the period within which to file objections expired on June 21, 2007. No written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed findings of fact are supported by the

¹ Because the Plaintiff was proceeding *pro se* at the time Defendant Sellers filed his motion to dismiss, the Magistrate Judge issued a *Roseboro* Order on April 30, 2007. Plaintiff thereafter retained counsel and his attorney filed Notice of Appearance on May 25, 2007.

record and that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation that the Defendant Sellers' motion be allowed in its entirety.

IT IS, THEREFORE, ORDERED that the motion of Defendant Sellers to dismiss is **ALLOWED**, and the Plaintiffs' claims are hereby **DISMISSED WITH PREJUDICE** as to Defendant Jay Sellers in his official capacity.

Signed: June 25, 2007

A handwritten signature in black ink, appearing to read 'L. H. Thornburg', written over a horizontal line.

Lacy H. Thornburg
United States District Judge

